



FR-4915-01

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

30-day notice of request for approval: Statutory Authority to Preserve Rail Service

AGENCY: Surface Transportation Board.

ACTION: Notice and Request for Comments.

SUMMARY: As required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3501-3519 (PRA), the Surface Transportation Board (STB or Board) gives notice of its intent to seek from the Office of Management and Budget (OMB) approval of the information collections required under 49 U.S.C. 10904-05 and 10907, and 16 U.S.C. 1247(d). Under these statutory provisions, the Board administers programs designed to preserve railroad service or rail rights-of-way. When a line is proposed for abandonment, affected shippers, communities, or other interested persons may seek to preserve rail service by filing with the Board: an offer of financial assistance (OFA) to subsidize or purchase a rail line for which a railroad is seeking abandonment (49 U.S.C. 10904), including a request for the Board to set terms and conditions of the financial assistance; a request for a public use condition (section 10905); or a trail-use request (16 U.S.C. 1247(d)).

Similarly, when a line is placed on a system diagram map identifying it as an anticipated or potential candidate for abandonment, affected shippers, communities, or other interested persons may seek to preserve rail service by filing with the Board a feeder line application to purchase the identified rail line (section 10907). Additionally, the railroad owning the rail line subject to abandonment must, in some circumstances, provide information to the applicant or offeror. The Board previously published a notice about

this collection in the Federal Register on February 10, 2012, at 77 FR 7236-37 (60-day notice). That notice allowed for a 60-day public review and comment period. No comments were received. The information collection for which approval is sought is described in detail below. Comments may now be submitted to OMB concerning: (1) the accuracy of the Board's burden estimates; (2) ways to enhance the quality, utility, and clarity of the information collected; (3) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology, when appropriate; and (4) whether this collection of information is necessary for the proper performance of the functions of the Board, including whether the collection has practical utility.

DESCRIPTION OF COLLECTION

Title: Statutory Authority to Preserve Rail Service.

OMB Control Number: 2140-00##.

STB Form Number: None.

Type of Review: Existing collection in use without an OMB control number.

Respondents: Affected shippers, communities, or other interested persons seeking to preserve rail service over rail lines that are proposed or identified for abandonment, and railroads that are required to provide information to the offeror or applicant.

Number of Respondents: 40 (including informational filings required of railroads).¹

Frequency: On occasion.

Table – Number of Yearly Responses.

Type of Filing	Number of filings
Offer of Financial Assistance	3
OFA—Railroad Reply to Request for Information	3
OFA—Request to Set Terms and Conditions	1
Request for Public Use Condition	9
Feeder Line Application	1
Trail-Use Request	20
Trail-Use Request Extension ²	19

¹ In Fiscal Year (FY) 2011, there were 56 filings under 49 U.S.C. 10904-07 and the Trails Act. See *Table – Number of Yearly Responses*. In the 60-day notice, the Board indicated that there were approximately 60 respondents. Although no comments were filed, it has come to our attention that approximately 30% of the filings were additional filings submitted by railroads or trail users that had already submitted filings during the time period. Therefore, the number of respondents has been revised to approximately 40, which is 30% less than the number of filings.

² In the 60-day notice, the Board did not separate trail use requests into initial trail-use requests and extension requests, but it has done so in this notice because the initial request has a capped filing fee and the extension request does not. The distinction is necessary to more accurately derive the cost to the government of this collection and the total non-hour burden cost, which increases from \$41,980 (in the 60-day notice) to \$45,780.

Total Burden Hours (annually including all respondents): 374 hours (sum total of estimated hours per response X number of responses for each type of filing).

Table – Estimated Hours Per Response.

Type of Filing	Number of Hours Per Response
Offer of Financial Assistance	32 hours
OFA—Railroad Reply to Request for Information	10 hours
OFA—Request to Set Terms and Conditions	4 hours
Request for Public Use Condition	2 hours
Feeder Line Application	70 hours
Trail-Use Request	4 hours
Trail-Use Request Extension	4 hours

Total “Non-hour Burden” Cost (such as filing fees): \$45,780 (sum of estimated “non-hour burden” cost per response X number of responses for each statutory section and type of filing).

Table – Estimated “Non-Hour Burden” Cost Per Response.

Type of Filing	Filing Costs	Other Costs	Total Costs
Offer of Financial Assistance	\$1,500	\$90	\$1,590
OFA—Railroad Reply to Request for Information	\$0	\$30	\$30
OFA—Request to Set Terms and Conditions	\$23,100	\$30	\$23,130
Request for Public Use Condition	\$0	\$30	\$30
Feeder Line Application	\$2,600	\$200	\$2,800
Trail-Use Request	\$250	\$30	\$280
Trail-Use Request Extension	\$450	\$30	\$480

Needs and Uses: Under the Interstate Commerce Act, as amended by the ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 (1995), and Section 8(d) of the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act), persons seeking to preserve rail service may file pleadings before the Board to acquire or subsidize a rail line for continued service, or to impose a trail use or public use condition. Under 49 U.S.C. 10904, the filing of an OFA starts a process of negotiations to define the financial assistance needed to purchase or subsidize the rail line sought for abandonment. Once the OFA is filed, the offeror may request additional information from the railroad, which the railroad must provide. If the parties cannot agree to the sale or subsidy, either party also may file a request for the Board to set the terms and conditions of the financial assistance. Under section 10905, a public use request allows the Board to impose a 180-day public use condition on the abandonment of a rail line, permitting the parties to negotiate a public use for the rail line. Under section 10907, a feeder line application provides the basis for authorizing an involuntary sale of a rail line. Finally, under 16 U.S.C. 1247(d), a trail-use request, if agreed upon by the abandoning carrier, requires the Board to condition the abandonment by issuing a Notice of Interim Trail Use (NITU) or Certificate of Interim Trail Use (CITU), permitting the parties to negotiate an interim trail use/rail banking agreement for the rail line.

The collection by the Board of these offers, requests, and applications, and the railroad's replies (when required), enables the Board to meet its statutory duty to regulate the referenced rail transactions.

Retention Period: Information in these collections is maintained by the Board for 10 years, after which it is transferred to the National Archives as permanent records.

DATE: Comments on this information collection should be submitted by September 10, 2012.

ADDRESSES: Written comments should be identified as “Paperwork Reduction Act Comments, Surface Transportation Board, Statutory Authority to Preserve Rail Service.”

These comments should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Patrick Fuchs, Surface Transportation Board Desk Officer, by fax at (202) 395-5167; by mail at OMB, Room 10235, 725 17th Street, N.W., Washington, DC 20500; or by email at

OIRA_SUBMISSION@OMB.EOP.GOV.

FOR FURTHER INFORMATION, CONTACT: Marilyn Levitt, (202) 245-0269.

[Federal Information Relay Service (FIRS) for the hearing impaired: (800) 877-8339.]

Relevant STB regulations are referenced below and may be viewed on the STB’s website under E-Library > Reference: STB Rules,

<http://www.stb.dot.gov/stb/elibrary/ref_stbrules.html>.

SUPPLEMENTARY INFORMATION: Respondents seeking authority from the Board to preserve rail lines must submit certain information required under the Board’s related regulations and, in some circumstances, railroads seeking to abandon a line must disclose certain information to the offeror or applicant.

Offer of Financial Assistance. When a rail line would otherwise be approved for abandonment (or discontinuance), any financially responsible person may seek to acquire the line for continued rail service (after abandonment has been approved), or may seek to temporarily subsidize continued operations by the incumbent railroad (after abandonment or discontinuance has been approved), by filing an OFA under 49 U.S.C. 10904 and 49

CFR 1152.27. An OFA may be submitted to the Board as soon as the railroad seeks abandonment (or discontinuance) authority. Once an OFA is submitted, the abandoning railroad must, upon request, promptly provide to any party considering an OFA and to the Board an estimate of the annual subsidy or minimum purchase price; a report on the physical condition of line; and data on traffic, revenues, net liquidation value, and the cost to rehabilitate to class I (minimum) track standards. If the parties are not able to agree upon the purchase price or subsidy, then, to move forward, either party may ask the Board to set the price or subsidy, which will be binding upon the parties if the offeror chooses to accept the terms set by the Board and proceed with the purchase.

Public Use Request. Any person may request that the Board prohibit an abandoning railroad from disposing of the right-of-way—for up to 180 days—without first offering the right-of-way (on reasonable terms) for other suitable public purposes (such as mass transit, pipeline, transmission lines, recreation, etc.). Such requests are governed by 49 U.S.C. 10905 and 49 CFR 1152.28.

Feeder Line Application. When a line has been identified on a railroad's system diagram map as a potential candidate for abandonment (or discontinuance), but before abandonment (or discontinuance) authority has been sought, any financially responsible person (other than a Class I or II railroad) may, by filing a feeder line application under 49 U.S.C. 10907 and 49 CFR 1151, seek to acquire the line for continued rail service under the forced sale provisions of the feeder railroad development program.

Trail-Use Request. The Trails Act provides a mechanism whereby any interested person may seek to “railbank” a rail right-of-way that has been approved for abandonment and use the property in the interim as a recreational trail. The Board has a ministerial role in

this process; under 49 CFR 1152.29, interested persons may submit a request to the Board for a trail use condition, and if the statutory conditions are met, the Board must authorize the parties to negotiate a trail-use agreement by issuing a CITU, or, in an exemption proceeding, a NITU. The CITU or NITU typically permit negotiations for 180 days, but the negotiations can be extended upon request to the Board. Under the Trails Act, trail-use agreements are consensual, not forced. The abandoning railroad is free to choose whether or not to enter into or continue negotiations to transfer (all or part of) the right-of-way to a trail sponsor.

Under the PRA, a Federal agency conducting or sponsoring a collection of information must display a currently valid OMB control number. A collection of information, which is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c), includes agency requirements that persons submit reports, keep records, or provide information to the agency, third parties, or the public. Under section 3506(b) of the PRA, Federal agencies are required to provide, concurrent with an agency's submitting a collection to OMB for approval, a 30-day notice and comment period, through publication in the Federal Register, concerning each proposed collection of information, including each proposed extension of an existing collection of information.

Dated: August 6, 2012.

Jeffrey Herzig

Clearance Clerk

